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COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the Child
on the sale of children, child
prostitution and child pornography
Third session, 3-14 February 1997

COMMENTS ON THE REPORT OF THE WORKING GROUP

Note of the Secretary-General

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Introduction

1. In paragraph 26 of its resolution 1996/85, entitled "Rights of the Child", the Commission on Human Rights requested the Secretary-General to transmit the report of the working group on the question of a draft optional protocol to the Convention on the sale of children, child prostitution and child pornography (E/CN.4/1996/101) to Governments, relevant specialized agencies and intergovernmental and non-governmental organizations, the Committee on the Rights of the Child and the relevant Special Rapporteur and to invite their comments thereon in time for circulation prior to the next session of the working group.

2. Pursuant to this resolution, the Secretary-General, on 4 October 1996, addressed requests to Governments, intergovernmental and non-governmental organizations concerned, as well as to the Special Rapporteur on the sale of children, child prostitution and child pornography and the Committee on the Rights of the Child, for their comments.

3. As of 29 November 1996, a reply had been received from the Government of South Africa.

4. Replies were also received from the Council of Europe, the Crime Prevention and Criminal Justice Division, the Department of Humanitarian Affairs, the International Court of Justice, the Organization of American States, the United Nations Educational, Scientific and Cultural Organization and the Office of the United Nations High Commissioner for Refugees.

5. Comments were submitted by the International Planned Parenthood Federation, International Save the Children Alliance and the World Alliance of Reformed Churches.

6. The present report contains a summary of the substantive replies received. It also includes information submitted by the Governments of Jamaica and Togo and by the non-governmental organization Education International pursuant to Commission on Human Rights resolution 1995/78, received after the preparation of documents E/CN.4/1996/WG.14/2 and Add.1.

7. Any additional replies will be reproduced in an addendum to the present report.

I. COMMENTS RECEIVED FROM STATES

Jamaica

[Original: English]
[8 January 1996]

1. The State of Jamaica stated that the notes of the working group and the draft optional protocol have been examined as they seek to eliminate the sale of children, prostitution and child pornography.

2. The experiences of some countries are such that these matters are high on their list of concerns as the practice is seemingly prevalent.

3. Although the Jamaican experience has tended to be one of stability, in that the sale of children, child prostitution and pornography have not surfaced, the Government of Jamaica is of the view that a protocol to reduce, eliminate and punish the perpetrators of such acts should be adopted.

4. It is the view of the State of Jamaica that where there is no existing legislation, States parties should ensure that appropriate legislation is enacted to address these issues.

5. The State of Jamaica agrees with the provision for penalization, compensation and protection of the children. It should be further emphasized that every effort should be made to safeguard the identification of the victims and appropriate sanctions should be instituted against those who breach the provisions. The victims would certainly have suffered grave psychological hardships and their interest should be protected by States from further exposure and identification.

6. International cooperation is vital and the protocol should provide for the extradition of the perpetrators to originating countries to face trial and sentencing.

7. The Justice Department and the Police Force will certainly play an active role in this regard to ensure the appropriate dispensing of justice.

8. To address the issues raised, certainly education of the population is of vital importance. Each State should develop an aggressive education campaign to sensitize the population on the effect on children, the existence of the protocol and, most importantly, the action to be taken if any such instance is known.

9. This is important because policing by the State alone cannot ensure the identification of every case. It is cooperation by individuals who report such incidents which will eliminate the practice.

10. The protocol should include systems for anonymous reporting, but with specific information to identify, locate and apprehend the perpetrators.

11. The protocol is an important provision and the document should be supported when presented for adoption.

Togo

[Original: French]
[8 March 1996]

1. The Togolese Government, which appreciates the efforts made by the working group for the elaboration of a possible draft optional protocol to the Convention on the Rights of the Child, is gratified by the steps taken by the international community to strengthen appropriate legal machinery for promoting, protecting and ensuring respect for all the rights of the child in the world.

2. Togo, which has always been mindful of the fact that children, owing to their extreme vulnerability, need appropriate legal protection in all circumstances, takes note of the procedural guidelines set out in annex III to the working group's report (E/CN.4/1995/95).

3. In associating itself with the outstanding efforts made by the international community in this sphere, the Togolese Government wishes to submit the following observations.

4. The Togolese Government, which recognizes that the best interests of the child should in all circumstances be a primary consideration, wholeheartedly approves the spirit of all the procedural guidelines presented. Furthermore, it supports the working group's analysis with a view to the solution of these specific problems faced by children throughout the world.

5. The Togolese Government supports the principle that the optional protocol envisaged should pay particular attention to the need to take all necessary measures at the national and international levels to prevent and eradicate the practices of sale of children, child prostitution and child pornography, as well as necessary measures for the rehabilitation of victims.

6. In this connection, it considers that attention should be paid to prevention, which constitutes the priority strategy in efforts to provide effective guarantees of the rights of the child.

7. As regards the principles set out in the definitions, the Togolese Government considers that the definition of a child is fully in accordance with that given in article 1 of the Convention on the Rights of the Child.

8. However, although this definition fully covers the concept of a child, the Togolese Government considers it necessary in specific cases to indicate the various age categories that should make it possible to define the juridical personality of a child, namely: the minimum legal age at which a child may consult a lawyer or a physician without the consent of his parents; the minimum age at which the child is released from the obligation to attend school; the minimum age at which the child may work, as well as the minimum legal age of consent for a child to have sexual relations.

9. With regard to the second point, the Togolese Government takes note of the scope of application described in connection with the measures to be taken, but considers that the optional protocol envisaged should be extended in a more explicit manner to cover other factors, such as the abduction of children if, in the spirit of the principle, no penalties are provided in connection with the sale of children.

10. The Togolese Government fully endorses the definitions of these last two concepts, namely, prostitution and pornography. However, by virtue of the principle according to which the Convention regards the child as a subject of law and not as a passive object of law, the Togolese Government would not agree to the concept of sale being used in this specific case. It would be better to use the term "trafficking" in order to protect the dignity and best interests of the child.

11. As regards the principles underlying the implementation of relevant instruments, the Togolese Government supports the action taken by the working group in expressly inviting States to strenghten their national legal systems so as to provide better guarantees of the rights of the child, particularly in connection with specific problems concerning the sale of children, child prostitution and child pornography.

12. The Togolese Government is of the view that States must therefore concentrate their efforts on the protection of the child against practices affecting his survival and all-round development. To do so, States must accord priority to prevention in the framework of their legal systems and adopt appropriate legislation embodying the provisions of international and related instruments.

13. The Togolese Government also approves what the working group has done to encourage States to ensure the effective application of international legal instruments on the subject.

14. As for the penalization, compensation and protection of children, the Togolese Government fully endorses the appropriate penalties under criminal law envisaged to prevent and punish the sale of children, child prostitution and child pornography. It is of the view that such provisions are necessary in order to discourage those responsible for such acts and their accomplices.

15. The Togolese Government endorses the recommendations addressed to States that they should adopt, in their national legislation, provisions that would allow child victims to be compensated and provide them with the assistance and means necessary to exercise their right to compensation.

16. The Togolese Government has no objection to the provisions concerning the protection of children, and supports the spirit of the principles set forth in this connection.

17. With respect to the principles relating to cooperation and coordination, the Togolese Government is gratified by the fact that the working group affirmed its commitment to international cooperation. It considers that the principles set forth imply that the provisions of the optional protocol envisaged will be implemented through international solidarity.

18. The Togolese Government considers that the intensification of bilateral cooperation should be emphasized and priority accorded to the decentralized preventive policies necessary to establish permanent contact between institutions and the officials of the States concerned by matters involving the sale of children, child prostitution and child pornography.

19. The Togolese Government wholeheartedly subscribes to the principle according to which States are invited, in the framework of bilateral and multilateral cooperation, to take such measures as are deemed effective to eliminate the consumer market that nurtures the increase in these practices.

20. Furthermore, the Togolese Government supports the principle of the eradication of poverty, hunger and underdevelopment, since poverty and the absence of economic development constitute one of the root causes of the sale

of children, child prostitution and child pornography. The Togolese Government urges the working group to pay greater attention to this subject, since it must be emphasized quite unequivocally that the interests and welfare of children go hand in hand with those of the adults who are responsible for them. Children will suffer these violations of their rights as long as parents have to confront enormous difficulties in order to survive.

21. With regard to the principles relating to assistance and rehabilitation, information, education and participation, as well as non-discrimination, the Togolese Government has no objections to formulate and supports the measures adopted, which are fully in accordance with the Convention on the Rights of the Child.

22. Lastly, it should be emphasized that the procedural guidelines for a possible draft optional protocol concerning the sale of children, child prostitution and child pornography are in complete conformity with the general principles set out in the Convention on the Rights of the Child, to which Togo is a party, namely, the principles of universality, non-discrimination, the best interests of the child, consideration of the views of the child and the survival and development of the child. For that reason, Togo reaffirms its wholehearted support for the principles set out and urges the working group to pursue appropriate action with a view to the implementation of this initiative which would effectively contribute to the reinforcement of machinery for the protection and promotion of the rights of the child in the world and supplement the Convention on the Rights of the Child in a specific manner.

II. COMMENTS RECEIVED FROM UNITED NATIONS BODIES, SPECIALIZED AGENCIES AND INTERGOVERNMENTAL ORGANIZATIONS

Crime Prevention and Criminal Justice Division

[Original: English]
[24 October 1996]

1. With regard to the general observations reflected in the report of the working group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Crime Prevention and Criminal Justice Division should like to draw attention to the following mandates, which are before the crime prevention and criminal justice programme, and activities under way in response to them.

2. The question of how better to protect children from becoming victims of illicit trafficking, child prostitution and child pornography has been addressed within the United Nations crime prevention and criminal justice framework on various occasions. Most recently, upon the recommendation of the Commission on Crime Prevention and Criminal Justice at its fifth session the Economic and Social Council, in its resolution 1996/26 entitled "Measures to prevent illicit international trafficking in children and to establish penalties appropriate to such offences", requested the Secretary-General to continue to gather the opinions of Governments on the elaboration of an international convention or conventions on the illicit traffic in children, and their suggestions on possible elements to be included in the text of a future binding instrument or instruments on that subject. Prior to that, upon

the recommendation of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and the fourth session of the Commission, the Secretariat was mandated by the Economic and Social Council to seek the views of Member States on this subject, which were reflected in a report of the Secretary-General to the fifth session of the Commission (E/CN.15/1996/10).

3. The issue of child trafficking was also addressed by a 1994 expert group meeting, which was organized by the Division in cooperation with the Centre for Human Rights, UNICEF and the Austrian Ministries of Youth, Justice and Foreign Affairs. The experts called upon Governments to take decisive steps to ensure sufficient protection of children from becoming victims of illicit trafficking. In addition, the 1996 World Congress against Commercial Sexual Exploitation of Children asked the Commission on Crime Prevention and Criminal Justice to elaborate an international convention or other legally binding instrument against trafficking in children.

4. It is the understanding of the Crime Prevention and Criminal Justice Division that any convention or other legally binding international instrument would focus on the specific issue of illegal trafficking in children, regardless of the reasons for such trafficking. Accordingly, the Division is mandated by the Council to undertake a survey, on the basis of existing international conventions, analysing the extent to which children are protected from becoming victims of illicit international trafficking. This survey will take into account both substantive and procedural aspects of providing such protection, and will compile and analyse the data collected. To this end, the Division is asked to analyse technical aspects of children travelling across borders and identify cases of illicit trafficking in children. The Division will screen and analyse the extent to which relevant international conventions reflect necessary procedural provisions for legal child migration and provisions ensuring the repatriation of those children who became victims of illicit trafficking. Further, the Division will analyse the gaps among the existing conventions with respect to the prevention of children becoming victims of illicit trafficking. The results of the survey will be presented to the sixth session of the Commission, in April 1997, at which the Commission will continue to discuss the question of elaborating a convention or conventions against illicit trafficking in children.

Office of the United Nations High Commissioner for Refugees

[Original: English]
[9 January 1996]
[7 November 1996]

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) recalled that its mandate is to provide international protection to refugees and to seek durable solutions for them. Women and children constitute the majority of refugees and other persons of concern to the Office in the world today. Within its mandate UNHCR has taken a particular interest in the plight of women and children who seek international protection. Violence against such groups, in its various forms, which may include forcing a child into prostitution, pornography or illegal sale, as well as the prevention and eradication of such activities, is of particular concern to UNHCR.

2. During the past decade a number of initiatives have been taken at the international level to prevent and eradicate sexual abuse of refugee children. For example, the Executive Committee of the High Commissioner's Programme has adopted a number of conclusions on the protection of refugee children. The conclusions note the problems refugee women and children face in the area of physical security and sexual exploitation, and call for preventive measures by States to enhance their physical security. In addition, the Office has published Refugee Children: Guidelines on Protection and Care, and Sexual Violence against Refugees: Guidelines on Prevention and Response. The Childrens' Guidelines incorporate the principles expounded in the Convention on the Rights of the Child and, in this regard, UNHCR referred to chapter 7 which addresses issues of "Personal liberty and security".

3. The Guidelines have been widely disseminated to UNHCR staff, Governments and operational partners in order to make them aware of the principles and action, at the field level, which can be taken to prevent abuse of refugee and asylum-seeking children.

4. It is in this connection that UNHCR is keenly interested in the development of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. In response to the request to comment on the guidelines for a draft optional protocol, as contained in annex I of the report of the Working Group (E/CN.4/1995/95), UNHCR is generally satisfied with the guidelines as prepared. As groups of refugee and asylum-seeking children are particularly vulnerable to the sort of abuse and violence which is the subject matter of a draft optional protocol, UNHCR would suggest that specific reference be made to this group. However, in making this suggestion it recognizes that the development of an optional protocol is in the early stages. Thus, it may be warranted to consider this recommendation during the actual drafting process.

5. As stated above, UNHCR's responsibility for providing protection to and finding durable solutions for refugees, more than 50 per cent of whom are children, leads it to view these practices as serious crimes which are potentially very harmful to their victims, the children involved, and to which refugee and displaced children are particularly vulnerable.

6. In this context, UNHCR welcomes any initiative which helps to minimize the risk of children falling victim to these crimes. UNHCR stresses at the same time that strengthening and, perhaps more importantly, effective implementation of existing provisions of international and indeed domestic law prohibiting such activities may play an important role in combating these practices.

7. For this reason, UNHCR urges that strong enforcement provisions and clear standards for implementation of national legislation criminalizing these offences and providing for adequate punishment be included in the protocol. Although the section on penalization and prosecution is clearly in its first formative stages, UNHCR is pleased to note that the instrument will address the issue of States parties taking jurisdiction over such offences when either the victim or the offender is a national of the State. UNHCR would advocate

the deletion of the words "if the State considers it appropriate" (E/CN.4/1996/101, annex, chap. IV, para.2 (c)) from the provision relating to victims, to strengthen the provision.

8. Likewise, with respect to the sections relating to extradition, UNHCR would urge the adoption of strong, mandatory language making such offences extraditable, rather than merely facilitating language.

9. While advocating strong enforcement provisions, UNHCR at the same time is concerned that child victims of such practices not be liable for punishment for their participation in such offences. Refugee and displaced children are particularly at risk of being coerced into these types of activities and UNHCR is pleased to note that there is contemplated a section addressing the protection of these victims, and ensuring that the special interests of children are safeguarded at all stages of the judicial process. UNHCR would even advocate a more precise enumeration of the special needs and interests of children which should be addressed in any guidelines or legislation which would address this issue. The Children's Guidelines (chaps. 7 and 8) and the Training Module on Interviewing Applicants for Refugee Status (chap. 5) list some considerations which may be helpful in formulating such a provision.

United Nations Educational, Scientific and Cultural Organization

[Original: English]
[28 November 1996]

1. The United Nations Educational, Scientific and Cultural Organization (UNESCO) strongly condemns the sale of children, child prostitution and child pornography, which are violations of children's rights, and fully supports the various efforts aimed at ending them, including the adoption of an optional protocol if such a protocol fills significant gaps within the Convention on the Rights of the Child and creates complementary obligations for States parties which can actually be enforced.

2. UNESCO shares the concerns, expressed by several of the delegations during the working session, that the proliferation of international instruments should be avoided. The Convention on the Rights of the Child in articles 34 and 35 already imposes obligations on States parties to protect the child from all forms of sexual exploitation and sexual abuse. In the coming years, the challenge for the international community and for individual States parties will be to devote all available energies to strengthen the monitoring and implementation of the Convention in its widest sense.

3. The Convention on the Rights of the Child is a comprehensive and universally accepted instrument which addresses not only the sexual exploitation of children per se but also focuses attention on those areas which lead to the abuse of children, such as exploitatative child labour, domestic service or illegal adoptions. It sets children's rights within a larger economic, social, educational and cultural context which, if improved, would end the exploitation of childre, at least on a large scale. With its emphasis on the right of the child to life, health and development, the Convention points to a fundamental cause of widespread child abuse, namely poverty and ignorance.

4. While it is true that underdevelopment must not be used as a justification for the sexual exploitation of children, neither should it be overlooked. Grinding poverty, forced labour, family neglect and vulnerability to sexual exploitation have become the destiny of countless children. The Convention underlines the necessity for all States parties to undertake educational and social programmes for the well-being of children in especially difficult circumstances and engage in international cooperation on their behalf. If for no other reason, education and job training must become in all countries an effective alternative to exploitative child labour, including the commercial sexual exploitation of children.

5. Another area of concern for UNESCO is the frequent lack of children's media to promote the child's social, spiritual or moral well-being and physical and mental health (art. 17). On the other hand, programmes and materials depicting pornography and violence, including sexual violence, are recurrent and pervasive. If media portray women as unemplowered, as commodities to be exploited, it is not surprising that a culture is created which tolerates prostitution and sexual exploitation. In short, much remains to be done in all countries - while maintaining freedom of expression - to encourage media to make the principles and provisions of the Convention known and contribute to the education of children and parents.

Council of Europe

[Original: English]
[18 November 1996]

1. The issues addressed in the draft optional protocol to the Convention on the Rights of the Child are of permanent concern to the Council of Europe. Among the numerous Council of Europe activities aiming at furthering children's rights and protection, particular attention should be given to recommendation No. (91) 11 of the Committee of Ministers on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults.* This text represents a comprehensive programme of action and legislative reform dealing with such matters as education and information, prevention, assistance to victims, the criminalization, detection and prosecution of offences related to child pornography, child prostitution and trafficking in children, and international cooperation.

2. Against this background, the preparation of the draft optional protocol to the Convention on the Rights of the Child has to be welcomed as a major step forward at the international level in translating many of the recommendations contained in the above-mentioned Council of Europe text, into binding internatonal norms, thus protecting children more effectively against the various forms of sexual exploitation.

3. The draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography deals with

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* Available for consultation with the secretariat.

the legal protection of [children]/[child victims]. The European Convention on the Exercise of Children's Rights* facilities the exercise of the substantive rights of children by strengthening and creating procedural rights which may be exercised by children themselves or through other persons or bodies. This Convention therefore takes into account article 4 of the United Nations Convention on the Rights of the Child which requires States parties to undertake all appropriate legislative, administrative and other measures for the implementation of the rights in the United Nations Convention.

4. The European Convention deals with family proceedings affecting children which take place before judicial authorities (i.e. courts or administrative authorities having judicial powers). Although the European Convention deals with family proceedings, parties are free to apply it to other types of cases if they wish. Family cases may include cases concerning the protection of the child from cruel and degrading treatment.

III. COMMENTS RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

Education International

[Original: English]
[5 December 1995]

Education International supports the initiative to have a protocol which deals with the sale of children. It hopes that the term "sale of children" is also understood to include children sold into bonded labour. Education International belives that the protocol should also refer to the responsibility of States to provide compulsory education for all children as the best means of assisting children to prepare for their future.

Interernational Planned Parenthood Federation

[Original: English]
[1 October 1996]

In anticipation of the report of the working group on its second session, International Planned Parenthood Federation drew attention to its work in the field of sexual and reproductive health rights. These are detailed in the IPPF Charter on Sexual and Reproductive Rights,* launched on 5 September 1996. IPPF cited the rights contained in the Charter which they believed to be relevant.

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* Available for consultation with the secretariat.

(a) Charter right No 12 - The right to be free from torture and ill-treatment. IPPF recognizes and believes that all persons have the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and not to be subjected to medical or scientific treatment without free and informed consent and, therefore:

"12.1 All children have the right to protection from all forms of exploitation and, in particular, sexual exploitation, child prostitution and all forms of sexual abuse, assault, and harassment, including coercion of a child to engage in any unlawful sexual activity, the exploitation or use of children in prostitution or other unlawful sexual practices and the exploitative use of children in pornographic performances and materials."

"12.5 All persons have the right to protection from rape, sexual assault, sexual abuse and sexual harassment."

(b) Charter right No 1 - The right to life is also relevant:

"1.2 No child's life should be put at risk or endangered, particularly not by reason of her/his gender."

International Save the Children Alliance

[Original: English]
[18 November 1996]

1. The Convention on the Rights of the Child was adopted in 1989 and has been ratified by 187 Governments. The provisions of the Convention clearly state the child's right to protection against all forms of sexual exploitation including sale of children, child prostitution and child pornography (art. 34); they also include protection from sexual abuse (art. 19).

2. In 1990, the United Nations Commission on Human Rights created the post of Special Rapporteur on the sale of children, child prostitution and child pornography to monitor and assess the situation worldwide and make specific recommendations for action.

3. In 1992, the Commission on Human Rights adopted the Programme of Action on the Sale of Children, Child Prostitution and Child Pornography.

4. In 1996, Governments, United Nations organizations and NGOs from more than 100 States participated in the World Congress against Commercial Sexual Exploitation of Children. A declaration was adopted and a concrete plan of action developed to prevent the commercial sexual exploitation of children, to protect the rights of children and to facilitate the rehabilitation of children who have been victims of the phenomenon.

5. The existing instruments provide comprehensive coverage of the rights of the child to be protected from all forms of sexual exploitation.

6. Governments must be strongly urged to honour existing commitments, to strengthen existing mechanisms, to concentrate all available resources in support of immediate practical action and, therefore, to refrain from needless further debate.

7. The International Save the Children Alliance believes there is no need for an optional protocol. In accordance with this belief the International Save the Children Alliance will not be exercising its right to participate as an observer at the forthcoming working group sessions.

World Alliance of Reformed Churches

[Original: English]
[29 October 1996]

1. Following the recommendation of the Executive Committee of the World Alliance of Reformed Churches (WARC) at its last meeting in August 1996, the Secretary-General of WARC wrote a letter to the Swedish Government, UNICEF and ECPAT, commending them for convening the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and calling upon Governments to adhere to and implement the Convention on the Rights of the Child.

2. Moreover, sexual exploitation of children will be one of the themes discussed during the WARC General Assembly next year, which will bring together delegates from all member churches. This should lead to a more active involvement of WARC in the defence of this issue.